

## **FOREWORD**

The television industry is changing in ways that were unimaginable only a few years ago. Broadcasters are beginning to lose control over the way their programmes are watched and when they are watched. New technology is creating a future vision of television dominated by on-demand services.

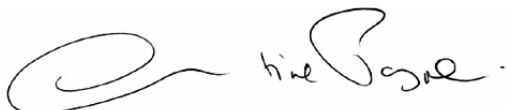
This is a world where programmes can be viewed anytime, any place and on a range of devices – from personal video recorders (PVRs) and broadband computers, to mobile phone and games consoles. Even traditional TV viewing is changing, with the Government confirming that the switch to digital will take place between 2008 and 2012.

It was against this background that Equity agreed to hold a number of seminars and discussions with broadcasters and producers, about the main challenges facing the television industry and the implications for Equity's television agreements. This specifically included the possibility of creating a single agreement to cover all television work.

This document is an outcome of those initial discussions and a considered attempt to identify the shared problems and opportunities in the new television landscape. It is also the first attempt to develop key principles and models that will protect the interests of artists, but provide the necessary flexibility to enable programmes to be used in new and exciting ways.

Further detailed discussions will now be required in order to address a range of specific issues raised in this document – as well as the impact on the work of specialist groups, including walk-on and supporting artists, singers, stunt performers and voice-over artists.

These discussions will shape the future earnings and working patterns for Equity members in television and their importance should not be underestimated. I hope that you will take time to read this report and provide feedback to Equity by engaging in the discussion that this document is designed to provoke. You can do this either through your Equity Branch or Committee, Annual General Meeting, or by providing comments directly to me at the address on page 5.

A handwritten signature in black ink, appearing to read 'Christine Payne', with a large, stylized flourish at the beginning.

**CHRISTINE PAYNE  
GENERAL SECRETARY**

**February 2006**



## EXECUTIVE SUMMARY

### Background

- Declining audience share and illegal use of material on new technology is driving the strategy of broadcasters as they seek to access new platforms, with a view to retaining a fragmented audience.
- Equity acknowledges these changes and has already made agreements to trial the use of members' work on these new platforms. However, an all-encompassing agreement and framework is necessary, rather than a reliance on ad-hoc deals.

### Key Principles

- Equity should have **one television agreement**.
- Equity members must be **no worse off overall** than they are now (preferably better off once they are rewarded for the range of new and future uses).
- A future television agreement should provide **greater clarity, transparency and adaptability**.
- There must be a commitment to **enforcement** of a new agreement and mechanisms to ensure **compliance**.

### Process

- A single pan-industry agreement is possible in one go, but may be more difficult and take longer to achieve.
- In order to attain the key objectives above, Equity may also consider a two-stage process – firstly, bringing together the three existing agreements and making provisions for the use of new technology, then proposing ways in which to classify the value of channels after digital switchover and beyond.
- Both approaches should remain a possibility, so that the negotiators are afforded maximum flexibility to pursue an agreement that is appropriate.

### Primary fee structure

A range of primary engagement fees are likely under any new agreement.

- Basic Package – payable for the work itself and one UK transmission (TX) on a lead channel *or* a bundle of transmissions on secondary channels.
- Public Service Broadcaster (PSB) Package – an enhanced fee for 7-day availability on a basic range of platforms, increased if this is to include a full range of platforms.

## *The Future of Television Agreements*

- Commercial/ Subscription Package – the option for a subscription channel to make programmes available across the basic or full range of platforms, but at an enhanced rate due to the revenue received for the service.
- Co-Production Package – different fees payable depending on the range of uses for UK co-producers and overseas co-producers.

The need for these new uses is recognised universally. The key issue is devising appropriate payments and a structure that can account for a full range of uses.

### **Other primary factors**

- Any structure that incorporates uses into the initial fee (even when limited in the manner proposed) could be open to abuse, whereby the additional percentage is incorporated into a standard fee paid to artists.
- The practice of rolling-up the 35% pre-purchase payment under the PACT agreement has been one factor that has depressed mid-range salaries. Fee banding has been mentioned as a way to address this problem, but is considered too restrictive. In some circumstances the use of collective licensing may also need to be explored.

### **Working Conditions**

- The primary fee should relate to a week's work (where **a week is 5 out of 7 days**) made up of standard days (where **a day is 9 out of 10 hours**).
- Equity has clear targets for fee structures, but does not wish to tie its hands in any future negotiations with employers by making those targets public now. Fee structures will be negotiated in the context of the full agreements covering all contractual conditions, including secondary payments.
- These payments should all form part of the fee structure (aggregate earnings) on which additional uses are calculated e.g. royalties/residuals.

### **Secondary payments**

- There is not likely to be a single model of secondary payments that will work. It is much more likely that there will be a “mixed economy” approach – incorporating royalties, residuals and possibly collective licensing.
- The use of the **royalty** for genuine commercial transactions must continue, but not for artificial “sales” between a family of channels. Better understanding and monitoring of the royalty is required. Equity should engage the services of external specialists to ensure the royalty is operating properly, and draft clauses to ensure that it will do so in future.
- The **residual** structures under the current agreements are also confusing as they relate to different fees in different circumstances. The future application

of residuals should depend upon the status of a channel (or possibly programme), measured through a range of factors, including audience share.

- In future, there should also be a **residual payment for non arms-length sales**. Any proposed structure should also acknowledge the difference between free-to-air public service channels, which may not generate specific revenue, and subscription channels designed as commercial ventures.
- Other approaches to secondary use that have been discussed include payment according to specific number of viewers and the proposal to put all secondary use payments into one lump sum which would be subject to collective management. These concepts have been rejected by Equity.
- A single payment structure for **overseas uses** will be difficult to achieve, due to the differences that exist. ITV and BBC currently use a royalty, but PACT applies a 35% compulsory pre-purchase for rest of the world rights. The 35% has advantages and disadvantages for Equity members depending on their earnings and the success of a production. Broadcasters and producers also have differing views on the desirability of the 35%.

## **Conclusions and Recommendations**

- External factors and events may also shape the future of television agreements. However, given what we know the Equity Council has endorsed the approach outlined in this document.
- This includes recommendations that the key principles are endorsed; negotiators should retain flexibility about the process of achieving a new agreement; a range of primary fee packages should be available; mid-range salaries should be addressed; and that a more transparent and defined secondary use structure is developed that may have to reflect the status of a channel.
- Any comments or feedback from Equity members, Branches or Committees should be marked **TV DISCUSSION DOCUMENT** and sent to:

Christine Payne  
General Secretary  
Equity  
Guild House  
Upper St Martin's Lane  
LONDON WC2H 9EG  
info@equity.org.uk  
Tel: 020 73796000  
Fax: 020 73797001

## **SECTION ONE: INTRODUCTION**

Since July 2005 Equity has been involved in a series of meetings with broadcasters, independent producers and agents regarding the future of Equity television agreements. These “pan-industry” meetings have taken the form of seminars, presentations and working groups focussed on the challenges facing the television industry, both now and in the future.

Discussions of this nature were always going to be necessary in any case, to ensure that agreements were kept up to date. Consequently, these talks have been immensely helpful in identifying the issues that need to be addressed – whether in a single television agreement or a number of agreements. This document provides a summary of the discussions on these matters and a more detailed outline of the approach being considered by Equity negotiators.

### **BACKGROUND**

New technology has created a range of opportunities for the use of audiovisual work that were unthinkable only a few short years ago. The availability of programmes on the numerous digital and satellite channels has now been joined by increasingly affordable Personal Video Recorders (PVRs) and video-on-demand services (such as Sky+ and Home Choice) – and a growth in the use of the internet, mobile phones and games consoles for viewing audiovisual material.

These existing platforms are evolving at an incredible rate, with new services and devices being developed all the time. For example, even since these discussions got underway, the following developments occurred:

- Major new digital channels – More4, ITV4 and Sky Three were all launched and made available free-to-air on Freeview, as well as on cable and satellite packages. Five has also been granted a licence for a second channel.
- Sky Mobile TV – BSkyB and Vodafone are now offering packages of up to 19 subscription channels to all *Vodafone live!* customers on 3G phones.
- Sky by Broadband – the first service in the UK for watching sports highlights and legally downloading full length films onto home computers.
- Multimedia devices – the PSP (Sony) and a new video iPod (Apple) were launched, both of which can download and view audiovisual images.
- BT entertainment – the phone company announced its plans to launch a service able to download content from the internet and store 80 hrs of TV.
- Ofcom review – the regulator has stepped into a dispute between broadcasters and producers over rights for exploitation of programmes on new media, indicating the importance of an issue that will have a direct impact on the way these programmes are used and the structure of payments for Equity members.

The availability and affordability of new technology, as well as the high quality of reproduction possible through digital media, has also meant that audiovisual content is more readily available through illegal means. The most high profile example in UK broadcasting was the appearance of the new series of *Dr Who* on the internet before it had appeared on BBC television.

This combination of current and evolving platforms, along with unscrupulous users of technology, poses a hugely significant challenge for broadcasters. As a result they are desperate to develop legitimate platforms for viewers to access their programmes.

The implications of these changes must not be underestimated. Audiences are fragmenting at an unprecedented rate, with the audience share of the lead “terrestrial” channels facing continuous decline, as the share of other channels (cable, satellite, digital) continue to grow. This trend is illustrated below, in the audience share figures for the past ten years.

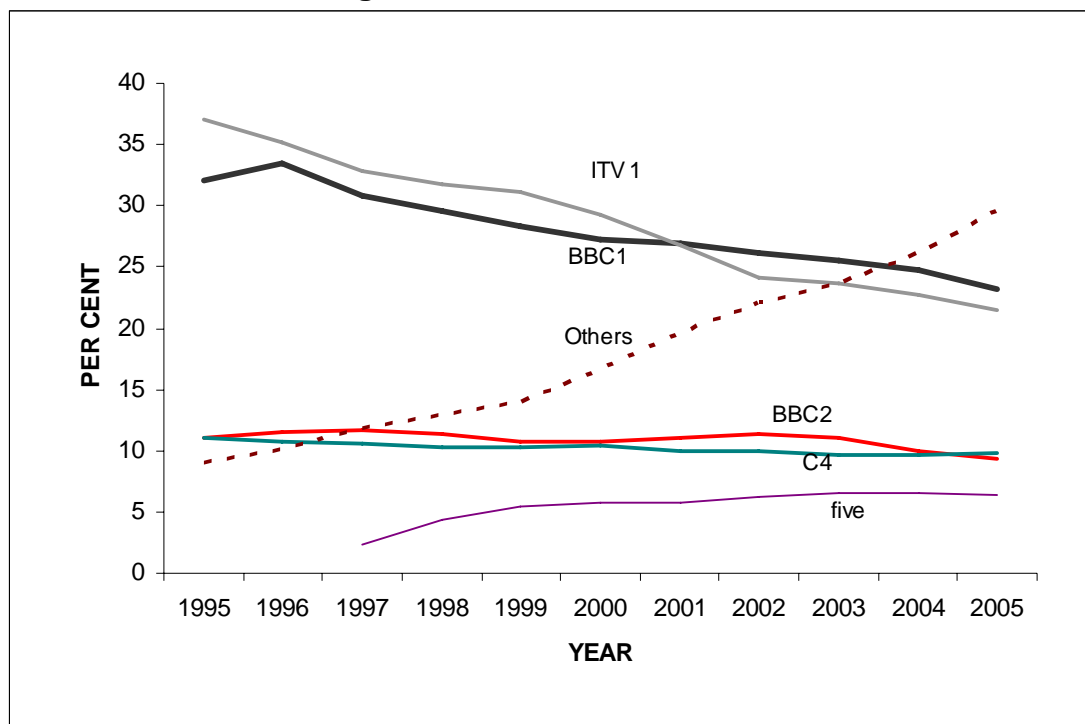
**Annual share of viewing: UK individuals (%)**

	<b>BBC1</b>	<b>BBC2</b>	<b>ITV 1</b>	<b>C4</b>	<b>Five</b>	<b>Others*</b>
1995	32	11	37	11		9
1996	33.5	11.5	35.1	10.7		10.1
1997	30.8	11.6	32.9	10.6	2.3	11.8
1998	29.5	11.3	31.7	10.3	4.3	12.9
1999	28.4	10.8	31.2	10.3	5.4	14
2000	27.2	10.8	29.3	10.5	5.7	16.6
2001	26.9	11.1	26.7	10	5.8	19.6
2002	26.2	11.4	24.1	10	6.3	22.1
2003	25.6	11	23.7	9.6	6.5	23.6
2004	24.7	10	22.8	9.7	6.6	26.2
2005	23.3	9.4	21.6	9.7	6.4	29.6

\* (cable, satellite, digital, RTE)

Source: BARB

**Annual Share of Viewing: UK Individuals 1995-2005**



Both the decline in audience of the main “flagship” channels (ITV1 and BBC1) and growth of digital and satellite channels are clear from the table and chart above in relation to the overall share of viewing.

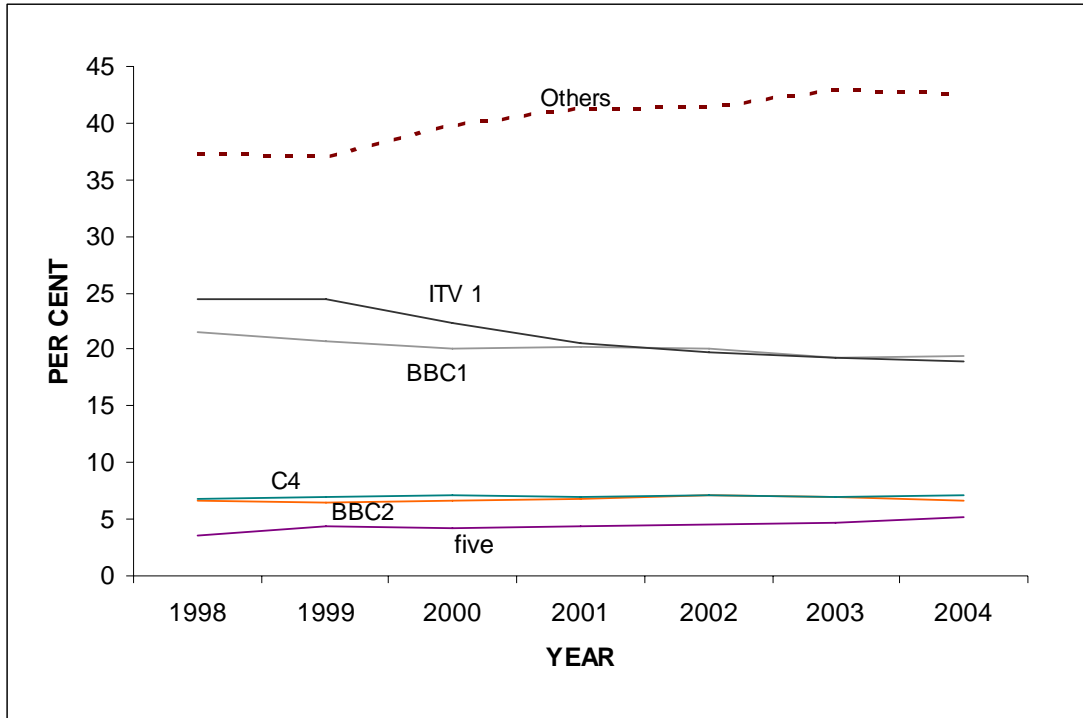
However, it is also worth noting that the main terrestrial channels have an even lower audience share in multi-channel homes, with the combined cable, satellite and digital channels commanding the highest proportion of viewers by some distance. This is a crucial point to be aware of given the expansion of multi-channel homes that is occurring, which is being actively supported by the Government through its digital switchover programme to be rolled out between 2008 and 2012. The breakdown of audience share for UK multi-channel individuals in recent years is shown below.

	<b>BBC1</b>	<b>BBC2</b>	<b>ITV 1</b>	<b>C4</b>	<b>five</b>	<b>Others*</b>
1998	21.5	6.7	24.5	6.8	3.5	37.2
1999	20.8	6.5	24.5	6.9	4.3	37
2000	20	6.6	22.3	7.2	4.2	39.8
2001	20.2	6.8	20.5	7	4.3	41.2
2002	20	7.1	19.7	7.1	4.6	41.5
2003	19.3	7	19.2	6.9	4.7	42.9
2004	19.5	6.7	18.9	7.2	5.1	42.6

\* (cable, satellite, digital, RTE)

Source: BARB

**Annual Share of Viewing: UK Multi-Channel Individuals 1998-2004**

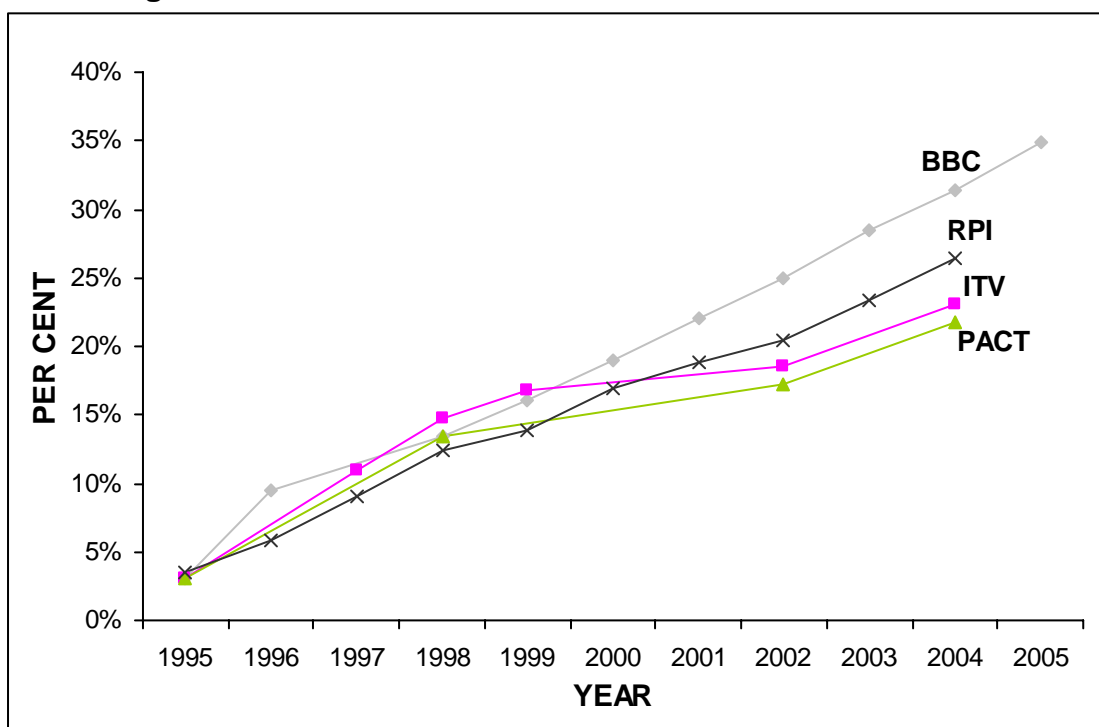


It should be noted that despite the fact that this trend has been occurring for some time, artists’ fees at the minimum have steadily increased through the review of existing agreements. The table below demonstrates this point by showing the *changes to minimum rates* in the BBC, ITV and PACT agreements since 1994.

	BBC minimum	ITV minimum	PACT minimum
1994	£361	£497	£520
1995	£372		
1996	£396.50		
1997		£551.25	
1998	£412	£573	£590
1999	£423	£584.55	
2000	£436		
2001	£449		
2002	£462	£593.25	£612
2003	£479		
2004	£493	£620.25	£639.50
2005	£510		

The following graph illustrates these changes as percentage increases since 1994 in relation to RPI. It should also be noted that during this time residuals have continued at the same level for repeats on the main channels, implying a greater the cost for the broadcasters despite the fall in audience share on these channels.

#### Percentage increase in minimum fees since 1994



Despite these regular increases at the minimum, there is some evidence that pay rates *above* the minimum have not been subject to updating in the same way. As a result many mid-range artists have not seen their earnings improve on a regular basis.

Nevertheless, consistent improvements to Equity minimum rates against a background of the continuing decline in viewing figures for the major channels is a cause for concern for the broadcasters. It is therefore one of the reasons that

the broadcasters will be pushing to change the balance of the payments they make, so that the share of income from lead channels is compensated for by rewards for work used on the range of new platforms and digital channels.

This approach fits with the broader strategy of the main broadcasters, whereby they believe that they must make their material available across as many of these new platforms as possible, in order to retain a sizable proportion of the market in this new environment. This is the only way in which the overall audience reach of broadcasters can be maximised, in an era when scheduled (or linear) programming is likely to be superseded by much greater use of on-demand (or non-linear) viewing accessed in a myriad of different ways.

There have already been some limited examples and trials agreed by Equity.

- Video-on-demand and stacking – The BBC has agreed to provide payment through British Equity Collecting Society (BECS) for video-on-demand and stacking of programmes (i.e. on-demand availability of all previous episodes up until a week after the end of the series). Equity is also in discussion with ITV and Channel 4 with a view to establishing similar arrangements for the use of members' work.
- Internet/ broadband premieres – Equity and the BBC have also agreed to a trial of video-on-demand on the internet, for 15 titles (mainly 30 minute comedy), with payment distributed through BECS. This follows an initial trial involving similar on-line availability of *The Mighty Boosh*.
- Mobile phones – Broadcasters and producers have proposed a structure to enable the use of clips and images, as well as audio material for ring tones.

Equity understands the challenges that these changes present – and is not opposed to the extensive use of its members work across these new media, subject to the appropriate payment being made. Nevertheless there will need to be a flexible approach, which is capable of dealing with the different circumstances and type of use, some of which are outlined above.

For example, a collective licensing approach has been adopted in some cases, as a way in which to capture micro-payments that will be attracted for specific uses on emerging platforms. This approach has also been helpful in confirming the principle of payment for use of an artists' work, even where it may not generate an income stream. As a result, these public service uses cannot attract a royalty or payment related to an identifiable income, as there is none. This is different to commercial uses where a sale price can be used as a basis for calculating an appropriate payment.

However, the ad-hoc nature of these agreements does not help in developing a consistent framework for the future. In order to develop this framework, there must be a number of underlying and logical principles, which can be applied across the industry.

## **KEY PRINCIPLES**

Equity has been conducting its pan-industry discussions on the understanding that any future arrangement should be based on a number of underlying principles and policies.

- **Equity should have one television agreement** – It is long-standing Equity policy to pursue a single agreement with BBC, ITV and independent producers. However, this must not come at any price or to the detriment of Equity members.
- **Equity members must be no worse off overall** – This may seem an obvious statement, but it is vital to measure any proposals against this principle when involved in detailed discussions with the employers. As already noted above, there will be a great deal of pressure on broadcasters to reduce the cost of programming on channels that are losing audience share. The key for Equity will be to ensure that earnings are retained as much as possible, but are also balanced through the additional packages that reflect the use of material on new platforms, both now and in the future.
- **Agreements should provide greater clarity, transparency and adaptability** – This should relate to all aspects of the agreement, but should specifically include a full assessment of royalty application and the consideration of a residual principle for non-arms length sales.
- **Agreements must be backed-up by enforcement and compliance** – There must be an ongoing commitment to ensure employers are complying consistently with the agreement, as well as agreed mechanisms for auditing the application of specific terms and rectifying problems. This includes confirmation that usage will be properly monitored and appropriate payments made.

## **PROCESS**

So far the pan-industry discussions have been an invaluable mechanism, enabling Equity to make progress on a range of work that was always going to be necessary anyway when looking at the future of television agreements. However, it is possible that the competing agenda of public service broadcasters like the BBC and Channel Four will not be reconcilable with commercial companies like ITV or some of the small independents represented by PACT. In addition, the very structure of the agreements may mean that arrangements under one agreement will not be accepted by another employer (the 35% mandatory pre-purchase arrangement under PACT is likely to be a particular sticking point).

These factors are essential when considering the process – and the two main options that have been discussed for taking Equity's key principles forward in practice. These options are either **a)** a two-stage process, bringing together the current agreements in the current broadcasting environment based on developments in the next two years (prior to digital switchover), or **b)** an all-in-

one approach which deals with all the outstanding issues that the industry needs to address in the foreseeable future (including digital switchover).

- a) **A two-stage process** – Given the complexities of creating a single television agreement, it may be best to split the task into two stages. This would mean making an initial agreement, which develops a single set of terms and conditions and incorporates the use of material on new technology. However it would not directly address the question of analogue switch-off. With such an agreement in place a number of contentious issues, such as fee structure and royalty arrangements, will have been dealt with already. This agreement could then be used as a basis to negotiate terms for the use of material when all channels are digital, when there will be no distinction between primary and the main secondary channels (free-to-air) in terms of the delivery method.
- b) **A “big-bang” approach** – The alternative view is that the huge and fundamental change of this nature should be dealt with in one go. There are a number of difficult issues that will need to be addressed if one television agreement is to become a reality, the implications of digital switchover is just one of these. Moreover, any terms and conditions that are agreed will need to be costed against a whole package, which includes the impact of a new secondary use structure after digital switchover. In addition, two out of every three UK households (65.9%) already receive digital television and the switch off process is set to begin in the first quarter of 2008.

While there are arguments for both of these approaches it may be more realistic to expect that agreement could be reached on a narrower range of issues (but still including new technology and uses). This will then be a sound basis for further discussion on the structure of repeat fees, and how this is to be handled following digital switchover.

Even approaching the negotiations in this manner, there will still need to be some mechanism in place to deal with the new and existing digital channels as they are currently transmitted, but final agreement on a future payment method and fee structure could be deferred. Therefore, while a single agreement is possible in one go, it is likely that it would be more difficult and take longer to achieve. As a result a two-stage process may be an appropriate way forward, as this could be more manageable and assist in meeting the key objectives set out above.

However much of this will depend upon the approach of the broadcasters and producers. If a pan-industry agreement does not look achievable, due to the competing agendas and approaches of the employers, then a two-stage process is less suitable, as the bringing together of different terms and conditions (stage one) is no longer necessary. Similarly, this approach may be untenable if all broadcasters and producers reject a two-stage approach and develop the case for a pan-industry agreement to be a complete package.

For these reasons – and in order to provide the Equity negotiators with maximum flexibility during the course of the discussions – **both approaches will continue to be considered.**

## SECTION TWO: PRIMARY FEE

### PRIMARY FEE STRUCTURE

Much of the consideration at the seminars and in the working groups has focussed upon the minimum fee at the point of engagement, what it should buy and how it should be structured.

The background to this discussion has been the continual change in technology and need for programmes to be made available across a range of new platforms that are emerging and changing all the time. Many of these new technologies (particularly video-on-demand) have made it uneconomic, undesirable and often impossible to track individual uses and monitor each viewing of an audiovisual work.

In addition to this the broadcasters are under increasing pressure to make their programmes available on digital television and broadband to increase digital take-up and justify their status as public service broadcasters (PSBs). In particular, the BBC is compelled to build and provide public value for licence fee payers. To a lesser extent Channel 4 also has significant public service responsibilities as a publicly owned corporation, whereas ITV and Five remain public service broadcasters under their current licences, but have clear commercial considerations.

The other significant player, which should not be neglected, is Sky. While it has only been an interested observer in the discussions that have taken place so far, it does commission some limited programme production featuring Equity members (principally for Sky One). Moreover, its future involvement is essential if the proposed agreement is to cover the whole industry going forward.

Against this background it is important to recognise that the broadcasters themselves have competing needs and demands. This will need to be addressed and used to create **a fee structure that is still able to ensure that Equity members are no worse off overall.**

Bearing all these factors in mind it would appear that the following breakdown may offer a workable approach for the primary engagement fee.

#### 1. Basic Package

**A basic fee**, either for:

a) the work itself plus the right to make one UK transmission (TX) on a lead terrestrial channel (BBC1 & 2, ITV1, Channel 4 and Five).

OR

b) the work itself plus a number/ bundle of transmissions of *equivalent value* within the family of current secondary channels (e.g. for BBC – BBC3, BBC4, CBeebies, CBBC) and for subscription channels.

This *equivalent value* of secondary channel transmissions will need to be developed, but are likely to reflect relative size, importance and budget of the

channels involved. It may be that there is a league table of such channels of higher and lower value depending on these criteria.

For the purposes of the ongoing discussions Equity negotiators are of the view that this could breakdown in the following manner.

- For higher value channels:           Up to 4 transmissions  
  Time shifting (e.g. channels like E4+1)  
  Up to 3 months after first opportunity to view
  
- For lower value channels:           Up to 8 transmissions  
  Time shifting  
  Up to 1yr after first opportunity to view

Further uses beyond those identified would be payable through an alternative package, or else defined as secondary use.

## **2. Public Service Broadcaster (PSB) Package**

a) **An enhanced fee** for a time limited usage (probably 7 days) on a range of *free* platforms.

- Standard video-on-demand (VoD)
- Simultaneous relay on broadcasters website
- Digital broadcasts on the family of channels
- Mobile phone portals

b) **A further enhanced fee** for the time limited availability of programmes (in additional to the basic 7 days) in ways other than those identified above on a range of platforms.

- Broadband premieres or teasers.
- Stacking – making all previous episodes available to view on-demand up until 7 days after the last transmission.
- A time limited extension in the availability on any of these platforms (possibly up to 28 days).

## **3. Non-PSB/ Subscription Channel Package**

This fee would be payable for subscription channels that produce programmes but have no PSB requirement (such as Sky), or producers making for these broadcasters.

The subsequent uses available may well be similar to the PSB package. However, the fact that such channels are available only through subscription and not free-to-air, will need to be taken into account in constructing the fee. Moreover, it may be necessary to judge the commercial nature of the use and non-PSB status of the broadcaster.

These distinctions between free-to-air PSB uses across a range of platforms and similar uses for subscription channels has led to the consideration of an additional payment or a premium in order to obtain the same uses. Nevertheless this may be a difficult distinction to sustain given that Sky provides

free-to-air digital programming that features actors or performers - and if commercial channels such as ITV decide to charge for access to on-line or mobile content.

#### **4. Co-Production Package**

Co-producers will want to have the ability to pre-purchase rights at the point of production. Equity acknowledges that this is a genuine commercial requirement, and that any such arrangement will be necessary in order to provide adequate funding for both UK and non-UK co-productions. Therefore, any agreement will need to acknowledge that a pre-purchase facility of some nature is required.

The key question that has yet to be addressed is whether this pre-purchase should be mandatory (as is the case with the rest of the world rights pre-purchased in the PACT agreement by the 35%), and what the final structure and value of the payment should be.

##### a) UK co-productions

In order to secure funding for some UK programmes to be made, there will need to be a facility for co-producers to pre-purchase some limited UK rights. These rights are most likely to provide:

- Transmission(s) on minor channels that provided co-production funding.
- Availability on different platforms (e.g. VoD, internet, mobile, games consoles).

DVD rights and commercial sales are likely to be on the agenda, but Equity has rejected the suggestion that this could be pre-purchased for the UK market.

##### b) Non-UK co-productions

It is anticipated that, where overseas production companies, broadcasters and investors have been part of a co-production, they will require similar uses to those above. In addition, overseas co-producers often require DVD rights as a standard contractual condition, which is effectively a pre-requisite for co-production finance.

#### **BUILDING ON THE BASIC FEE**

Assuming that this range of primary use packages is appropriate, the subsequent payment level would be based upon an additional element, depending on the use(s) that were required.

It appears that the broadcasters and producers would like this to be a simple pre-purchase arrangement, whereby there was an additional percentage payable for additional uses. This principle is broadly reflected in the table below - although none of the additional percentages have been identified.

<b>Package</b>	<b>Cost</b>	<b>What does it buy?</b>
Basic	Basic fee	Work + 1 UK TX on lead channel
Basic	Basic fee	Work + no. of TX days in secondary market
PSB1	Basic fee+A%	7-day basic PSB uses (as defined)
PSB2	Basic fee+A%+B%	Extra PSB uses (stacking, teasers)
Comm1	Basic fee+A%+C%	7-day basic commercial uses (as defined)
Comm2	Basic fee+A%+B%+C%	Extra commercial uses (stacking, teasers)
Co-prod1a	Basic fee+W%	TX on minor co-producing channel (UK)
Co-prod1b	Basic fee+W%+X%	Uses on co-producing platforms (UK)
Co-prod2a	Basic fee+Y%	Overseas for co-producing channel
Co-prod2b	Basic fee+Y%+Z%	Overseas uses plus DVD rights

However, a wholesale expansion of pre-purchase arrangements is not likely to be in the interest of Equity members due to the manner in which it can be rolled up into the artists' fee (as has occurred with the 35% pre-purchase in the PACT agreement – see below).

Therefore it may be that – in the short/ medium term – one way to offer an additional range of primary use packages could involve additional payment on top of the basic fee through a collective licence. Indeed for subscription-based services (such as mobile phones and catch-up TV) it may offer the only realistic way of ensuring that any additional payment is made at all.

The multiplicity of transactions and variable subscription packages will mean that no payment model could track individual transactions and enable payment through a royalty or residual type system. Given that the pre-purchase approach also causes a difficulty, it may be that the collective licensing for these specific services is the only realistic option.

## **OTHER PRIMARY FACTORS**

- **Abuse of pre-purchase arrangements**

Under the current PACT agreement there is a mandatory 35% additional payment, which was designed to provide producers with rest of the world rights (not US or UK) and benefit artists by acknowledging the additional cost of pre-purchasing these rights. However, there is an acknowledgement that (above the minimum) this 35% can be incorporated into the fee that is paid for a programme.

Therefore, if the budget for an artist to be contracted is £1000 for a week's work, this figure will be worked backwards in the following manner.

Basic fee is quoted	£741
35% pre-purchase	£259
Total fee payable	<b><u>£1000</u></b>

The net result is that the producer will still pay £1000, but will get these rest-of-the-world rights within this original price, rather than pay an additional 35% to take the fee to £1350 (or alternatively make appropriate royalty payments on these rest of the world sales, as in the BBC and ITV agreements).

- **Mid-Range Salaries**

The use and abuse of pre-purchase arrangements has exacerbated the problem of mid-range salaries being depressed, with the 35% being incorporated into the package and depressing the true value of an artist's fee.

This pressure is in addition to the overall squeeze on budgets that has increased in recent years, with the inflationary drive in fees paid to key talent at the top end, as well as regular increases at the minimum. As a result mid-range salaries are one of the main areas where the broadcasters will seek savings.

The difficulty of developing a primary fee structure that provides menus of uses for broadcasters combined with pre-purchase options (in the manner outlined above) is that it could result in an extension of the problem for those artists on mid-range salaries. As a result the pan-industry talks have included some consideration of how this problem could be addressed.

There was some discussion about the practice of setting rates above the minimum, but this **fee banding** is considered to be too restrictive and carries a number of risks. Even if such banding was more transparent and could be set against a range of factors (most likely including the specific role, programme type and genre), it is likely to be problematic and contrary to the interests of Equity members. Moreover, many agents are fundamentally opposed to the concept of fee banding, as they believe their scope for negotiation would be minimised if not eliminated, with fee categories unable to reflect the status of the individual artist.

That said, it was noted that broadcasters and producers are currently applying a form of fee banding quite widely (mainly for long-running series such as *Casualty* and *Holby City*), through the use of artificial maximum rates, used to provide certainty in budgeting and control costs. This has been done in the absence of any consultation and negotiation.

However, even if there were a range of identifiable rates subject to some degree of negotiation (and not simply for cost cutting/ control purposes) it still may not be possible to adapt this approach to one-off dramas or serials.

- **Collective Licensing**

Equity continues to believe that an appropriate primary fee package (combined with royalty and residual arrangements for secondary use) is the best way to reward artists. While these should continue to be the main methods of payment, there may need to be further consideration of collective licensing for a narrow range of new services – where there is no defined revenue stream and such tried and tested methods cannot realistically be applied.

For example, where a mobile phone operator provides a subscription service for a flat weekly or monthly fee, this fee would have to be “aggregated” and subject to some legitimate deductions, before being broken down by each programme. If this artificial price for the programme were then subject to a royalty (based on original earnings), such a formula would only provide fractions of pennies for the artists.

Similarly, any price for catch-up television broadcasts made available on the internet would be next to impossible to enforce and monitor, even in circumstances where a payment is made for the service (although some public service broadcasters may make such programmes available free of charge).

A collective licensing arrangement could arrange the collection and distribution of all such payments beyond the initial engagement fee or related packages. This would operate in a similar manner to British Equity Collecting Society (BECS), in that it would provide additional income outwith the identifiable contractual payments. As noted earlier in this document, BECS has already collected income for the trial of the BBC’s on-demand services.

It is conceivable that a similar organisation could collect a range of micro payments for a broader range of identifiable uses. This arrangement would be capable of guaranteeing additional payment on top of the primary fee, with the intention of providing a more even distribution of payments that flow after this point.

Collective licensing could also assist Equity in achieving its overriding principle of ensuring that members are no worse off overall, by ensuring that the net budget payable to artists is identified and not reduced.

However, the key would be:

- 1) Identifying which primary uses should relate to the primary fee.
- 2) Deciding what uses should attract micro payments, the nature of the uses and the level of the payment.
- 3) Assessing whether collective licensing should cover any secondary uses or repeats on particular platforms.
- 4) Establishing an effective monitoring and distribution organisation.

Therefore collective licensing may have a role in collecting such micro-payments. For further consideration of the issues around collective licensing see **ANNEX 4**.

## **SECTION THREE: WORKING HOURS AND FEES**

There have been a number of separate meetings and discussions with employers, which have focussed on the full range of working conditions in the three existing television agreements – and identified the issues that would need to be addressed in any future pan-industry agreement. Equity's focus has been on ensuring proper working conditions that cannot be misrepresented or abused.

These discussions have focussed on working hours; travel and subsistence; second call payments; script delivery & rehearsals; credits; health & safety; pensions; trade union facilities as well as a proposed code of practice – to include sickness procedure, disputes procedure, equal opportunities, paternity and maternity leave. A number of these matters are summarised below, with further detail on these discussions provided in **ANNEX 1**.

Other issues that will need to be considered include provisions for casting data reports (which could include monitoring of equal opportunities); pre-production information; time of payment in respect of royalty/residuals; late payment penalties; invoicing for non-contractual items (e.g. overtime, travel); rehearsals and a joint forum with employers.

At this stage no discussion has taken place with employers regarding the central issue of the proposed level of the basic primary fee or fees for the primary packages. However, in advance of more detailed discussion and negotiation Equity must develop a position on the minimum weekly fee and one day engagement fee and this whole range of working conditions.

### **WORKING PATTERNS**

- **A week's work?**

There is a degree of consensus with the broadcasters and producers that any basic fee(s) should reflect a week's work. There is a range of views as to what should constitute a week.

It should be noted that the working conditions group had identified that 11 day fortnights are often industry practice, therefore the standard week arrangement may need to be adjusted, or at least provide a simple mechanism to do so. Moreover, any additional payments identified below would form part of the aggregate earnings on which residual or royalty fees are based.

As a result of these factors, Equity's current view is that:

- **A week should be defined as any 5 days out of 7** – with the option of working additional days for additional payment.
- **Standard working days should be 9 hours in an overall period of 10** – with overtime payable after this time.

- Payments must be adjusted on a **pro-rata basis for short weeks**.
- In the event that work is extended to a **6th consecutive day**, artists could then be paid at a specified daily rate.
- Any work then done on a **7th consecutive day** should be paid at a premium (or enhanced) daily rate.
- No work should be done on the **8th consecutive day**.

There have also been considerable discussions about the importance of rehearsals. It is Equity’s position that adequate time during the working week needs to be allocated for rehearsals and that appropriate payments for rehearsal only days should be considered.

### **BASIC FEE LEVEL**

There are currently three different minimum weekly fees under the three agreements, with the added complication that the PACT fee includes a mandatory 35% pre-purchase element.

However, this comparison – based on a standard week working 5 out of 7 days – provides the only benchmark to use as a basis for setting the basic minimum fee under any new agreement.

<b>Agreement</b>	<b>Weekly total</b>	<b>Elements</b>
PACT	639.50 (excl. 35%)	1 x network engagement fee = 443.10 4 x production day = 196.40 1 x 35% pre-purchase (at min) = 172.27
BBC	510.00	1 x initial fee
ITV	620.25	1 x programme fee = 366 5 x production days (50.85) = 254.25

Note that the 35% pre-purchase under PACT has been excluded from the above calculation because we are trying to develop a basic weekly fee without the range of rights that this additional percentage implies.

Equity has clear targets for fee structures, but does not wish to tie its hands in any future negotiations with employers by making those targets public now. Fee structures will be negotiated in the context of the full agreements covering all contractual conditions, including secondary payments.

In addition, there will need to be a new single payment for one day engagements. It also makes sense for this to be benchmarked against the best practice of existing agreements. These are shown in summary in the table below.

Agreement	Daily total	Criteria
PACT	216.00 (5 over 6 hours)	Specific genre (education, docs etc)
	281.10	All other productions
BBC	223.00 (5 over 6 hours)	Specific genre (education, docs etc)
	332.00 (8 over 10hrs)	All other productions
	510.00	All other productions – multi episodic
ITV	196.00	Specific genre (education, docs etc)
	529.25 (6 episodes max)	Series, serials and similar

There will also need to be the consideration of special arrangements for specific genre of programmes. This is currently around £200 and £220, but it may be necessary to develop a range of various payments that reflect the artists' contribution as well as the nature of the programme.

### OTHER INITIAL FEES

There are a number of other elements that have been identified as primary fees, in that they relate to the work itself and its initial use.

It is also important to note that Equity negotiators are proposing that **in future a number of these fees should form part of the fee structure (aggregate earnings) on which additional uses are calculated** – specifically including royalties and residuals.

It would be particularly advantageous if overtime, multi-episodic, night call payments and additional penalty payments for working on a 6<sup>th</sup> and 7<sup>th</sup> day could be included in this total earnings package.

- **Overtime payments**

The principle of overtime payments based on additional hours done in a day is important, but often difficult to monitor and enforce. Some employer representatives have argued for aggregating of hours across the whole week before overtime is paid, which has been rejected by Equity as a way of attempting to avoid overtime payments being made at all.

All of the current agreements include provisions for the payment of overtime. The current hourly rates for overtime are:

- BBC        £35.70
- ITV        £32.60
- PACT      £34.50

(Note: The above rates for ITV and PACT are paid up to a maximum of 2 hours overtime worked and any overtime worked beyond that is paid at double the rate).

Therefore the average of all the current agreements is £34.27 per hour (and per 15 minutes is around £8.57). Alternatively, using the proposed daily rate of £300 (above) – over a standard day involving 9 hours work – comes out at £33.33 (and per 15 minutes is £8.33).

- **Multi-episodic payments**

While the inclusion of multi-episodic payments may create a slightly more complex payment structure, all of the current agreements currently recognise the higher value of a contribution, which results in appearances in more episodes.

The PACT and ITV agreements provide this recognition through a multiple proportion of the initial fee. The BBC agreement includes an escalating flat rate based on a higher number of episodes. While the simplicity of the BBC model was initially seen as attractive approach to adopt for a new agreement, it would appear that it has a very narrow application, and is used only for serials.

Category A programmes are drama/ series/ serials (inc Soaps)/ situation comedy/ broken comedy. Category B programmes are schools/ adult education / documentaries/ children's (inc pre-school), religious/ features/ instructional/ critical/ magazine.

As noted above, the fee and multi-episodic payments should also form part of the fee structure on which all additional uses are calculated (e.g. royalties and residuals). It may also be necessary to agree an enabling clause for specific genre or programme types that involve an extraordinarily large number multiple uses across episodes (e.g. children's programming such as *Tweenies*).

## SECTION FOUR: SECONDARY PAYMENTS

The discussions that have been held regarding secondary payments have considered a number of possible models for payment – but have *not* concluded that any single approach should be adopted.

It seems more likely that a “mixed economy” approach will be needed, with a different mechanism for different types of secondary use. This would necessarily combine elements of the royalty, a residual payment and possibly an element of collective licensing for some limited uses (as outlined above).

There are a number of specific issues relating to the use of both the **royalty** and **residual**, which require further detailed consideration. For that reason both of these methods of secondary use payment are subject to separate analysis in **ANNEX 2** and **ANNEX 3** (attached). Meanwhile, the sections below offer a summary of the key issues identified and some of the approaches being considered.

### ROYALTY

- **Royalty – current use**

There is a degree of consensus that the royalty system is the best way to ensure fair share of income for Equity members from commercial sales.

It is the best arrangement of its kind anywhere in the world and it is in Equity’s interests that a properly constituted royalty should continue.

However, there is widespread evidence that artists are not receiving a royalty related to gross receipts, but a 17% share of a sale price that has been reduced in a number of ways. While certain legitimate deductions from the sale price are permitted in some circumstances, the application of these deductions is neither consistent nor transparent.

In addition, there is considerable evidence that the use of the royalty payment for non-arms length sales between the family of channels owned and run by a broadcaster, do not reflect the commercial reality of a sale. Therefore the royalty on a sale of compatible programmes is failing to reflect the true value, as shown below.

<b>Programme</b>	<b>Sale</b>	<b>Price (approx)</b>	<b>Royalty</b>
Soap 1	BBC1 to BBC3	£12,000	17%
Soap 2	ITV1 to ITV2	£6,000	17%
Soap 3	Channel 4 to E4	£5,000	17%

It may be that it is administratively easier (and more transparent) for such transactions to be conducted through the application of a residual rather than a royalty, which does not currently reflect a true commercial transaction.

For this reason the negotiators recommend that Equity pursue the application of a **residual principle for use of programmes across a family of channels**.

- **Royalty – future use**

If we are agreed that the continued use of the royalty for genuine commercial sales is desirable, then this needs to be accompanied by the drafting of better clauses and tighter definitions of the royalty, to avoid some of the problems identified above. These clauses must be watertight and attempt to eliminate any existing ambiguity and scope for misinterpretation.

The royalty is an effective way to maximise income for Equity members in a commercial environment, but we need to have a better understanding of where we are currently. This will assist in the process of tailoring a standard clause (or clauses) able to better serve Equity members. Such clauses must include a right to audit the application of the royalty, as well as provisions for employers to cover the cost of such audits where non-compliance with agreements is discovered.

As part of this it may be that **Equity should engage the services of a forensic accountant** to look at specific titles and conduct such an audit, which will build up a picture of the existing problems and shortcomings. Further details of the type of service offered are included in **ANNEX 2**.

The use of such a service would assist in meeting the expressed objective to ensure compliance with any new agreement. It would also ensure that Equity exercised its obligation to enforce the terms of the agreement. It should be noted that this ongoing responsibility is likely to have continuing cost implications for Equity. However, the negotiators believe that the enforcement of agreements is such a fundamental responsibility that appropriate investment in this professional service would be justified.

## **RESIDUALS**

- **Residuals – current use**

At present residuals are calculated in very inconsistent way, with headline percentage rates that are often misleading. The residual rates alone provide no indication of the real value of payments, because the percentages quoted (for peak time repeats) relate to quite different fees.

- BBC        80% (of basic fee)
- ITV        100% (of programme fee)
- PACT      55% (of aggregate earnings)

Clearly, the value of these residuals to artists is dependent on the size of these fees, the nature of the engagement, the use of the material and the earnings on which the residual is based. For these reasons, and in order to enable a standard approach that is workable with all broadcasters and producers, a

residual based upon a variation of the ITV programme fee structure has been rejected.

However, the broader matter that should be addressed is not the size of the residual percentage or its origin– but **what the residual is a percentage of?**

Residuals under BBC and PACT can provide very different rewards for artists depending on the specific circumstances. For example:

- An artist working for three day's under the BBC agreement would only receive a residual of £136 per episode if their work were used in three episodes – whereas this would be £261.71 under the PACT agreement (see example 1, page 33).
- However, if they had done five day's work that was used in one episode, an artist would receive £408 per episode under the BBC agreement, but only £351.73 under PACT (see example 2, page 33).

Therefore, it is not as simple as identifying the largest residual percentage. The key is to balance this against the earnings on which the percentage residual payment is based.

Equity will therefore need to develop new models of residual structures. This process will require a clearer understanding of what exists under the current system and how this can be applied to the new television environment. As part of this process we will also need to examine the out-of-time escalator and how archive material is dealt with in any future agreement.

- **Residuals – future use**

Any residuals payable for secondary uses will need to acknowledge the status of the channel using the material. This is already the case in the sense that special arrangements have been made to allow for the cheaper uses in the UK secondary market.

Going forward the residual principle must also be extended to the “sale” of programmes between a family of channels. This is a much better way to deal with the anomaly identified above, whereby a royalty applies to vastly different and arbitrarily set prices for artificial sales.

In addition, it may be necessary to devise a method of **categorising channels**, so that repeats on larger, more established channels are rewarded with higher payments. Two possible approaches have already been reported to the Equity Council that would categorise channels.

- Option 1 – Paying a higher residual percentage depending on the status of a channel.
- Option 2 – Allowing a broadcaster to purchase tickets/ points to use across a range of channels.

	Option 1	Option 2
Major networks	Residual increases ↑	More tickets required ↑
Minor networks		
Major pay		
Basic		
Niche		

Further detailed information on Equity’s consideration of these different models for future residual arrangements has been provided to the Equity Council and Branches in the original TV discussion document at **ANNEX 5**.

However, these options are made problematic and considerably more complicated by the process of defining individual channels and measuring their relative importance. Equity would use whatever tools were available in order to provide an objective measure of this importance – examples of the type of factors that would could to be taken into account include: a channel’s audience share; its free-to-air or subscription status; advertising revenue; programme content; public service broadcasting status and licence conditions.

This would then need to be updated at regular intervals (probably annually) to ensure that the payment was up to date and the channels were categorised appropriately.

**OTHER APPROACHES TO SECONDARY USE**

Another variation on these options, which has been raised by employers at the pan-industry seminars, is **secondary payment according to specific viewing figures** relating to an individual programme. For example, if the EastEnders omnibus attracted 3 million viewers, it may be reasonable to pay 1p per viewer (3m viewers x £0.01 = £30,000) and share the payment between the cast in a similar manner to a royalty.

However, it is unclear whether this principle could be adapted to all programmes and whether the “price per viewer” would be set at a standard level or depend upon the channel, the scheduling of a programme or other factors such as genre. In addition, Equity should also note that the reduction in viewing figures for the lead channels (as illustrated in the graph on page 6) means that such a model would lead to a downward pressure. Nevertheless, this could be countered by the subsequent increases in audience and/ or payments from the range of new platforms and channels.

The broadcasters have also raised the possibility of a vast expansion of the collective licensing concept, which could provide a **single lump-sum amount for all secondary uses on all platforms**. This would involve identifying the amount paid in the last financial year for these uses and paying the same (or more). The uses would then need to be tightly monitored and income distributed according to use, but by a collecting society or similar distributor and not by the broadcaster or producer.

Such a system is attractive to the broadcasters as it is simplistic and makes significant administrative savings. It would also assist Equity in achieving its principle of ensuring that its members are no worse off overall. This particular approach has *not* been pursued due to concerns about how such a system would operate in practice, and whether it could be fair and transparent.

## **OVERSEAS USES**

There are very different arrangements for overseas sales within the three TV agreements. Both ITV and BBC operate the 17% royalty, which has worked well in a truly commercial market since its introduction. The renegotiation of the PACT TV Agreement in 1994 resulted in the introduction of a compulsory pre-purchase of rest of the world rights (excl. further UK uses, USA and video/DVD) at 35% of the artists' aggregate earnings for a seven-year licence period.

The compulsory 35% pre-purchase has remained a controversial element both liked and disliked in equal measures. The 35% is payable on the majority of productions made under the agreement and its application does not take into account whether the production has any overseas sales or the potential for overseas sales. The payment represents a financial bonus (in exchange for rights) on the majority of titles where there is no overseas sale, particularly for those artists engaged near or at the minimum.

If we accept anecdotal evidence that 80% of a cast are near or on the minimum with 20% above the minimum, the 35% payment represents a significant financial impact given that the majority of productions do not sell overseas. However, for those limited productions that sell significantly overseas, the 35% does not represent a very attractive proposition compared to monies generated arising from the application of a 17% royalty.

Members and agents argue that the existence of the 35% is a real hindrance in negotiating fees, as the independent producer tends to offer a global fee inclusive of engagement/production day payments and the 35% (as illustrated earlier in this document). This practice makes it practically impossible for agents to negotiate an appropriate fee and depresses the salary level on offer.

The employers, specifically the broadcasters, have never particularly welcomed the 35% compulsory pre-purchase for the very reason that it generates payments to all, while their productions rarely sell in any significant numbers in the markets covered by the 35%. They also state that if they have to pay any pre-purchase for these markets then the percentage level is pitched too high. The independent producers view the 35% as a benefit as its removal could spell, simplistically, the removal of an amount of money equivalent of 35% from the producer's budget.

This pre-purchase arrangement has always been subject to a review process but given the scale of the task and the potential costs involved no such review has taken place. The issue of 35% pre-purchase is likely to prove one of the most difficult areas for the negotiators to address during the course of the pan-industry process as the principle of pre-purchase rights will be at the heart of the negotiations.

## **SECTION FIVE: CONCLUSIONS AND RECOMMENDATIONS**

As this document demonstrates, the pan-industry discussions have provided an opportunity to explore a number of detailed issues, all of which will need to be addressed further in the actual negotiations on future television agreements.

Clearly there will also be external factors that will affect the shape of any final agreement – including the settlement of new media rights between broadcasters and producers, which could define an industry view of what constitutes a primary and secondary use “window”.

However, given the current situation there are several **key conclusions and recommendations** that require further consideration.

- The key principles identified should continue to be the framework for Equity’s negotiations – that is that Equity should have one television agreement; Equity members must be no worse off overall than they are now, bearing in mind the change in the nature and source of payments; agreements should provide greater clarity, transparency and adaptability; and that there must be a commitment to enforcement and compliance.
- Equity negotiators should be provided with the flexibility to consider the best process for achieving a pan-industry agreement – this will include further consideration of whether one agreement can be achieved in one go, or if a two-stage process should be pursued to deal with the current environment, followed by a re-negotiation of this agreement in advance of digital switchover.
- A range of *primary* use packages should be available with the payment of an enhanced basic fee.
- The pressure on mid-range salaries must be addressed. However fee banding does not appear to offer an appropriate solution.
- Members’ work will be used on services where there is no clear revenue stream. This will require a creative approach that is likely to include collective licensing.
- Payment for *secondary* use is likely to be made through a combination of a more transparent and defined royalty and a residual payable against the status of a channel. The use of external consultants should be investigated to develop the operation of the royalty and future models.

**February 2006**



## **ANNEX 1: WORKING CONDITIONS**

Working conditions for artists have been one of the main topics of discussion during the pan-industry seminars. The focus of these discussions has been whether a single “pan-industry” agreement is possible and also what the pertinent issues are facing artists when working under our agreements.

The key issues below are an outline of Equity’s view of what the working conditions should be under one agreement. Please note that this is not an exhaustive list and does not attempt to cover every detail that should be in or is already contained in the agreements. It was broadly agreed by broadcasters, producers and Equity that one agreement is possible and has numerous advantages for the industry.

### **1) Working Hours**

- It was agreed it is best to engage people on a weekly basis. Equity’s view is that a working week should be 5 days out of 7. It should be noted that the employers view is that the standard practice is 11-day fortnights and will want the agreement to reflect this.
- The standard working day should be 9 hours in an overall period of 10.
- Overtime should be payable after this time and there was broad agreement it should be paid per 15 minutes. There was discussion amongst the working groups that overtime is often not paid correctly and sometimes not paid unless invoiced for by the artist/agent. It was agreed by all that it is the responsibility of the producer to log hours and ensure that overtime is paid correctly. An idea that came from the working group was that there could be an industry-approved timesheet placed in the agreement as an appendix for all to use as a template if desired.
- The working day starts from make up/costume call.
- Any travel from base to location should form part of the working hours.
- A night call defined as work between midnight and 7.00am must be paid at a premium rate.
- No artist to work more than 6 consecutive days in a 7-day period. In exceptional circumstances where work does take place on a seventh consecutive day then there must be a high enough penalty payment that will act as a disincentive to a production company. No work can take place on the eighth consecutive day. This was agreed by all broadcasters and producers in the working group.
- The break between working days should be no less than 12 hours. The Working Time Regulations do not allow for a break of less than 11 hours. Equity’s view is that consent should be sought from the artist if the break between calls is to be less than 12 hours. The employers did not agree with this view.

### **2) Travel & Subsistence**

- When an artists’ home base is such a distance from the studio or location that the artist cannot feasibly travel from home to work, our view is that the artist should be provided with accommodation and paid travel and subsistence. The employers have a different view on this.

### **3) Second Call Payments**

- Artists must be paid for rehearsals, make-up tests, costume and wig fittings, post-synchronisation, photo calls, deferred or cancelled meal breaks, and the like. The concern here is that these are not always paid and pressure is put on artists to include these second call payments as part of the original fee. A suggestion from the working group is that these second call payments could be listed on the time sheet template for all to use. This could help monitor what payments are due.

### **4) Script Delivery & Rehearsal**

- There is a major problem with the late delivery of scripts and the lack of rehearsals, which has far reaching consequences for all. We would like this addressed but the employers are not sure how this can be feasibly dealt with in the agreements. Everyone agrees that the ideal situation is for scripts to be delivered at least three days before the first rehearsal and that there should be adequate time allowed for rehearsals. However, due to numerous pressures such as budget constraints, late commissioning, last minute changes to scripts this is very difficult to achieve.

### **5) Credits**

- Everyone agrees that credits are important and need to be clear and legible. Broadcasters often 'squeeze' the credits in an effort to keep their audience. Credits should therefore also be available via a 'red button' service, on the internet and some other new media platforms.

### **6) Code of Practice**

- This code could encompass sickness procedures, dispute procedures, paternity and maternity provisions and equal opportunities. The overall treatment of artists is a concern and we want to ensure that artists are provided with reasonable rest areas, proper changing facilities etc.

### **7) Pensions**

- Equity has openly discussed the possibility of artists being given the option to opt-out of the pension scheme (rather than opt-in), with the default option being that a proportion of income is put towards pension contribution.

## **ANNEX 2: BACKGROUND ANALYSIS – ROYALTY**

### **1) What do we mean?**

Simplistically speaking the royalty provisions in place within the three television agreements, BBC, ITV and PACT TV, confirm that each sale will generate a payment to the artists of 17% of gross receipts from each production sale divided between the artists, in proportion to their earnings. In relation to video/DVD the same structures apply with the exception that there is an arrangement for “legitimate deductions” to be taken from the gross figure before the 17% is applied (see below). Broadly, the 17% royalty provisions cover overseas sales, sales to the UK secondary market (both arms length and non-arms length sales) and video/DVD.

### **2) The market**

The use of the royalty provisions has seen considerable revenue returns to members arising from both national and international sales. The impact of the royalty, in terms of income returned, to performers arising from secondary exploitation of their work (from the BBC) is quantifiable in 2003/4 total payments (UK Gold, video/DVD, audio books and new media), which amounted to £19,333,204. This represents a 26% increase over the previous year.

Figures collated by the Department of Culture, Media and Sport for PACT show that total revenue from the exploitation of television programmes internationally amounted to \$974m (approx £570m) in 2004 – up from \$921m in 2003. Video/DVD revenue in the same period amounted to \$159m (approx £93m) – up from \$128m in 2003. In terms of scale Granada International now distributes production titles to over 155 territories worldwide.

### **3) The problems**

#### **i) Video/DVD**

It is fair to state that Equity is faced with a huge task in ensuring that the terms of our royalty agreements are applied correctly within the complex chain of national and international distribution. The simplicity of definition of our royalty is near breaking point due to the complexities of the financial arrangements and distributors within the market. Equity faces considerable costs in ensuring compliance from the companies to the terms, which will only be exacerbated by advances in technology. In 1999 Equity engaged the services of Keith Lowde to undertake an audit of Carlton, Hat Trick and Yorkshire TV to assess royalties payable to performers arising from sales of video/DVD linked to the Equity/PACT Television Production Agreement. The audit highlighted the inadequacies in some areas of royalty provisions and clearly showed that through differing interpretations of legitimate deductions the 17% is applied at different points in the financial chain, which therefore delivered differing and incorrect payments to members. Recent meetings with Fisher Accounting (the forensic accounting and litigation support division of HW Fisher & Company) have confirmed that in all audits there is under reporting to a significant level in 93-94% of cases.

ii) UK secondary television market

This is defined as all channels in the UK excluding BBC1, BBC2, ITV1, C4 and Five in whatever manner the service is delivered e.g. analogue, digital terrestrial, digital satellite or digital cable. The range and volume of channels available within the sector has exploded throughout the preceding decade in line with advances made in methods of platform delivery. Figures in this document provide an indication of the trends effecting audience share – and that the main terrestrial channels enjoy an even smaller share of viewing in satellite/cable homes. However, these figures do confirm that our terrestrial channels remain the lead channels, both generally and specifically in multi channel homes. While their share is being eroded by the secondary channels - which will continue to require content - the only real content rich providers in the UK are (and will continue to be) the current terrestrials.

Data provided by OFCOM shows that by September 2005 digital penetration was estimated to have reached 65.9% of UK households. Analogue switch off is scheduled to commence in 2008 with a completion date of 2012. Therefore the method we use as a distinction between primary and secondary television markets is set to disappear. However, it should be noted that there will still be a distinction between free-to-air and subscription channels.

iii) Application of the royalty

In 1996 a ballot of Equity membership endorsed the rollout of the terms of the multi media agreement to sales of productions to the secondary market. Payment to performers is based on 17% of gross receipts from each production sale, divided between the cast pro-rata to their original earnings. A £50 advance is paid against royalty payment in respect of the initial sale.

Whilst the ballot and subsequent introduction of the royalty was somewhat divisive, nobody at the time could have predicted explosion of non-arms length channels. With an ever declining audience share of their core channels in a multi channel landscape the broadcasters have sought to increase their share via the launch of secondary channels e.g. BBC/3/4, ITV2/3/4 and E4/E4+1/More4 2006 will see Five launch Five2.

This development has seen an increase in an artificial market whereby the seller and buyer of a production title is one and the same company. The terrestrial channels have established their own internal price matrix by which they apply the 17% royalty, which is unsustainable to Equity. Equity has the facility to question the sales price if it considers that it is not in line with open market prices. Equity has previously and successfully challenged sales prices, which were increased following the matter being referred to arbitration.

The royalty works well, with a number of caveats, when applied to commercial sales. However it is its application to non-arms length sales, which is open to criticism and therefore should be replaced with a more accountable and transparent structure. This could be linked to the artist's original earnings with any payment clearing a transmission, a number of transmissions or a license period or a mixture of all of these arrangements.

#### **4) Getting the royalty right**

A firm of forensic accountants such as HW Fisher & Company can provide two important services.

i) They can review all our royalty provisions and make practical suggestions for improvement, to ensure that future royalty agreements contain no ambiguities and that the terms are not only clear but enforceable. They can also ensure that clauses leave no doubt about the licensors' auditing rights, which hopefully will reduce the potential for subsequent disagreements. Key clauses will stipulate that under reporting above a certain level will require the licensee to bear the cost of the audit-which means that the services of the forensic accountants are effectively free.

ii) Any audit will confirm that all revenues have been fully and accurately reported. Such an audit will take into account not only the licensee's own books, but also any subsidiary or separate businesses.

The initial stages of engaging auditors will be to provide the auditors with copies of all the relevant documentation e.g. royalty clauses in addition to this the negotiators have put together a fleet of production titles, spread across differing genres, age, cast size and employer and identified the markets and delivery platforms which we wish to audit. It is hoped that the auditors can conduct a "blind" run which will provide us with costs involved in the audit and any rewording of the existing and new royalty provisions.

#### **5) The future**

i) Analogue switch off and the expansion of digital technologies will see an inevitable decline of audience share for the broadcasters as well as independents that hold rights in productions. This will result in further moves by employers to embrace the new technologies. We are already negotiating a number of variations to artists' standard contracts, to enable the broadcasters to sell productions via different platform delivery systems e.g. mobile devices, pay per view, video-on-demand and broadband etc.

All such new areas of delivery can provide additional income via the application of the royalty. The broadcasters need to gain access to these new markets and whilst we wish to enable them to do so we are now in a position to ensure that the royalty is working on the basis it was originally intended. To this end we are placing greater demands on them to ensure that there is transparency and accountability in all such agreements.

ii) Subscription vs Downloads:

There are two basic methods of receiving content via mobile devices: a) Subscription – this requires a subscriber to pay a monthly fee anywhere between £6 - £10 per month which gives the subscriber access to a number of channels e.g. C4 branded mobile channel and Paramount comedy. The signal is streamed to the mobile device and b) Download service – individuals can download, currently, anything from a few seconds clip to potential an episode on payment of anything between 3p-£5.

It is understood how in principle the 17% of a gross figure works but it proves problematical particularly in respect of subscription income as it will be difficult to pay members pro-rata to their original earnings. More thought is required as to how an equitable system of payment to members. All such deals tend to be territory specific e.g. the service is only available to UK Vodafone subscribers.

iii) Example – Model Revenue Streams:

New revenue models are emerging that illustrate the problem. For example, mobile operators are proposing packages that will require us to reach complex agreements the following details have emerged in recent discussions with C4 and the BBC. These models and approaches (below) also require examination of the future use of the royalty.

Model 1: Talent-Aggregator-Mobile Operator

Model 2: Talent-1<sup>st</sup> Aggregator-2<sup>nd</sup> Aggregator (gatekeeper)-Mobile Operator

The *talent* clearly represents our members, the *aggregator* will tend to be the broadcaster and obviously the *operator* is the likes of Vodafone, 3 and Orange.

Model 1. The aggregator receives 50% of total gross and the 17% is applied to the 50% (it is important to note that there are no deductions to be made before the application of the 17%).

Model 2. This model has emerged on the current Vodafone deal whereby between the 1<sup>st</sup> aggregator and the operator a third party acts as either a 2<sup>nd</sup> aggregator or a “gatekeeper”. In this model the 1<sup>st</sup> aggregator will still receive 50% and the 17% is applied to this for the talent, the major problem is that the gatekeeper tends to take between 20-30% off gross before it is passed down. Therefore the 50% is based on a reduced gross (of around 70% or 80%). In such models we can justifiably argue for an increase in the royalty to say 20-22% of 50%. Alternatively we can support the broadcasters’ attempts to increase the share received from the operator e.g. 60% or more.

Whilst the broadcasters, at this stage, are unhappy with the 50% return, in model 1 above, they are participating with the view that they are powerful enough and content rich enough to take on the operators. In the future they will demand greater returns, which in turn will result in our share increasing. Unfortunately the smaller channels such (e.g. Paramount Comedy) are in no position to muscle a bigger share off the operator nor can they avoid the 2<sup>nd</sup> aggregator therefore it is up to Equity to influence the returns to members.

## **6) Conclusion**

The process which Equity has entered into on a pan-industry basis has provided us with a number of opportunities. The major one is in relation to the royalty. It can be argued that the royalty, when applied on a true commercial basis, is a method of payment that enables sales to be made and a healthy return being made to the membership.

## *The Future of Television Agreements*

The process has enabled us to question the validity of the royalty, when applied to non-arms length sales to the current UK secondary television market. We should therefore seize the moment to remove access to the royalty provisions for sales to artificial secondary market constructed by the broadcasters – and instead seek to introduce a residual structure maybe linked to limited transmissions with a licence period.

The immediate future will see a plethora of means to view members' performances, either as a primary or secondary use as described above. A future agreement will be complex as it will need to accommodate many different scenarios. As a means of protection the agreements will need definitions relating to the new technologies. That will mean watertight wording relating to our automatic right to audit. In addition there will need to be clarity in relation to who pays for any audits – with the employer picking up the cost if the audit finds significant under reporting.

It then follows that if we are to enter into complex agreements that require on-going payments for many years to come Equity needs to address its current limited access to auditors and monitoring services which will enable us to police and enforce our agreements.

## **ANNEX 3: BACKGROUND ANALYSIS – RESIDUALS**

### **1) What do we mean?**

A residual as defined within our collective agreements means an agreed percentage for a defined use based on the artists' earnings. This arrangement has obvious advantages of transparency and a tangible knowledge of what an artist is being paid and why. It can also be used as a mechanism to pre-purchase rights at the time of contract. A residual also has the benefit of recognising the differences of scale between artists engaged on any particular production.

The broadcasters and other rights holders come to the table with a different view – the percentages are too high and act as a disincentive for sales. This is a view we have accepted in different markets and different media. All our collective agreements are examples of mixed economy arrangements borne from many years of negotiations and needs both from artists and the employers.

### **2) What types of residuals?**

Broadly there are three differing applications of any residual: i) a per transmission residual ii) a residual percentages that buys a licence period and iii) a residual that buys both a licence period and within this licence period buys a number of transmissions.

### **3) What do residuals grant?**

Equity has successfully defended the use of fixed residuals within the recognised UK terrestrial market and therefore artists receive the following residual payments for peak time repeat transmissions (TX):

- i) BBC – 80 to 100% per TX on BBC1 or BBC2
- ii) ITV – 100% per TX on ITV1
- iii) PACT TV – either 55 to 60% per TX on BBC, ITV, C4 and Five.

Broadly the residual is calculated on the artists' earnings (there are some differences in the level of residual depending on the time of day the production is transmitted). The BBC and ITV agreements beyond sales to the UK terrestrial market apply the multi media provisions (i.e. the royalty), whereas the PACT agreement is largely a co-production based agreement containing a number of differing residual structures, as detailed in b) above, for different media and territories.

Unlike the Screen Actors Guild TV agreement, which provides for a descending value in a production, all three UK TV agreements provide for an ascending value in the life of a production. Briefly, the agreements contain out of time escalators that increase the value of the artists original earnings by percentage arrived at by at least RPI. It then applies a fixed residual per transmission. The escalator has proved, from Equity's perspective, an extremely lucrative arrangement for the membership, but it is not viewed favourably by the employers.

#### **4) The problems**

Clearly a digital television landscape where there are no differences between primary and secondary channels presents us with both problems and opportunities. Equity must seek to defend the principle of a fixed residual for our traditional channels, which will still be the lead channels in a new market place of 200+ channels.

We can further argue that the principle of a royalty for sales on a non-arms length basis is becoming increasingly indefensible and therefore we can look to alternatives e.g. a residual for a number of transmissions over a defined period. Such an arrangement can also be used in the case of UK based co-productions and overseas based co-productions.

The emergence of the new forms of delivery e.g. mobile devices, pay-per-view, video-on-demand and broadband etc, by their very nature make it extremely difficult to apply a fixed residual per use. What it could do is clear a licence period for a percentage of the artists' earnings, but realistically speaking this will be difficult to achieve. However, the application of a royalty will ensure entry into this market and will generate some ongoing financial gain.

#### **5) The future**

Equity Council's position is that we should achieve a single agreement, which means marrying up three different agreements coming from different places and containing different levels of residuals. We have the opportunity now to look into the digital future, now-OFCOM have confirmed that 65.9% of TV households have access to some form of digital TV and data from BARB confirms that the five terrestrial channels still retain the highest individual audience share.

It is safe to assume that this development will continue up to and beyond the commencement of analogue switch off. It is crucial that we seek to establish now the residual value of transmissions on the major UK TV channels along with the percentage value of the minor channels. We will also need to establish agreed criteria as to how channels move between major and minor.

The current pan-industry discussions provide Equity with the opportunity to seek to remove the royalty as the payment mechanism for the use of performances on the family of channels currently operated by the BBC, ITV and C4 – and move towards a residual system of payments.

The major hurdle for Equity is that all the agreements contain good and not so good elements and on first glance the PACT TV agreement with its lower residual would appear to be the worst, but the reality is that the PACT TV agreement can often be somewhat better than the other two, in particular circumstances. This is largely because the percentages are based on higher aggregate earnings (see Example 1, below).

Clearly we would wish to see a higher level of remuneration payable for current broadcasts, but the first step we need to take is to define the following: i) a weekly salary ii) a daily salary and iii) the total fee on which residuals are based

and what is included in this total salary. The main report confirms a draft response to these issues.

It also refers directly to the different outcomes currently experienced by artists in the same circumstances, but engaged under different agreements in the manner outlined below.

**Example 1: Three day's work – used in three episodes (excl. serials)**

	BBC	PACT
% RESIDUAL	80	55
		443.10
		49.10
		49.10
		443.10
		443.10
TOTAL FEE	<u>510.00</u>	<u>1427.50</u>
/ 3 episodes	170.00	475.83
<b>Residual per episode =</b>	<b>136.00</b>	<b>261.71</b>

**Example 2: Five day's work – used in one episode**

	BBC	PACT
% RESIDUAL	80	55
		443.10
		49.10
		49.10
		49.10
		49.10
TOTAL FEE	<u>510.00</u>	<u>639.50</u>
<b>Residual per episode =</b>	<b>408.00</b>	<b>351.73</b>

## **ANNEX 4: COLLECTIVE LICENSING AND COLLECTIVE MANAGEMENT**

The history of the collective management of rights is almost as old as that of trade unionism. It is closely associated with French playwrights and composers, such as Beaumarchais, Victor Hugo and Paul Henion, who came up with the idea of the collecting society whilst fighting for the respect of their economic and moral rights against theatres and cafes who exploited their plays and work. Faced with the problem of policing and licensing the use of their works individually, they came up with the solution of forming societies to do the job for them. Some of these organisations are still in existence today – the Societe des Auteurs et Compositeurs Dramatiques (SACD) for playwrights, the Societe des Gens de Lettres (SGDL) for writers, and the Societe des Auteurs Compositeurs et Editeurs de Musique (SACEM) for composers and music publishers.

A collective licence is a simple lump sum payment made by users to rights-holders to pay for the use of their work when following situations apply:

- There is no single payment for a use;
- It is impossible or impractical to track and monitor the use by an individual rights-holder;
- The cost of rights clearance/administration outweighs the worth of the form of exploitation;
- It is proscribed by statute to facilitate rights clearance.

The following are examples of areas in which collective licensing is currently used:

- Communication to the public of published phonograms (airplay royalties on the radio);
- Public performance of recorded musical works in discos, pubs, shops etc;
- Photocopying;
- Educational recording;
- Cable retransmission;
- Lending.

Both Equity and BECS are already involved in collective licence schemes and Equity members are receiving increasing amounts of revenue from these sources. Revenue for the following uses is collected via collective licence:

### UK

- BBC 7 (BBC's digital radio station)
- BBC Simultaneous Cable Retransmission
- Educational Recording

### Europe

- Private Copying
- Communication to the public
- Rental
- Lending
- Cable retransmission

However, collective management in the audiovisual field for most rights-holders, authors and performers has been limited. Until relatively recently it has been easy to identify when and where an audiovisual work has been used, making it possible to place a certain individual value on the use of that work. In this traditional system of limited exploitation platforms, the value of individual performances has generally been in the region of pounds as opposed to pennies or percentages of pennies.

Up until now most rights-holders in the audiovisual area have been able to license their works individually through collective agreements, and they have received revenue for the use of those works through the royalties and residual structure.

However, technological developments that allow the multiple exploitation of audiovisual works are placing stress on the existing royalties and residuals structure. Increasingly we are seeing the introduction of a payment model for a service as opposed to an individual production. This might apply in the case of television services delivered via mobile phones, or when a large number of programmes are made available for seven days via internet based services. In these examples the costs of rights clearance/administration outweigh the cost of the product.

Therefore, actors are now facing similar problems to those that afflicted Beaumarchais and Victor Hugo. They need to be able to effectively track and license the use of their performances and may find that collective licensing is a suitable solution for certain forms of exploitation of their works.

In addition, collective licensing means that there is a guaranteed payment for a form of exploitation, something that other solutions such as fixed residuals cannot offer. A separate identifiable payment means that an individual's initial fee becomes more transparent, avoiding the stacking up of uses against an initial fee and, in effect, compressing the salary. It also generates greater transparency in licensing and gives performers and their representatives a greater say in how revenue is divided amongst performers, thereby dealing with problematic areas that persist under the existing mechanisms.

Collective licensing is not a panacea; it is an appropriate model for some forms of exploitation, notably nascent markets where it allows markets to develop whilst ensuring that performers are rewarded. It also avoids prejudicing future individual negotiations, which would fix values when the value is unknown or likely to grow. Furthermore, it can be used to ensure a balance between public policy objectives and the use of archive material by enabling access to knowledge without prejudicing payments to rights-holders.

However, it also has its downsides. It can transfer the cost of rights clearance to the rights-holders and lead to the 'flattening' of performers' re-use fees to the detriment of featured and star performers. Nevertheless, its simplicity appeals to many and it should be considered as a useful tool for performers in future negotiations.

## **ANNEX 5: ORIGINAL DISCUSSION DOCUMENT (APRIL 2005)**

### **FUTURE TV AGREEMENTS – INITIAL RECOMMENDATIONS FOR DISCUSSION**

#### **INTRODUCTION**

Future negotiations of Equity's television agreements are likely to be dominated by the arrangements regarding payments and future rewards for performers. The challenge will be whether the current systems of residuals and royalties can be amended to accommodate the huge technological and organisational change in broadcasting.

The impact of these changes on existing agreements has been subject to detailed discussion for some time. However, in the past year there has been some further detailed examination of the problems and possible ways of addressing the difficulties. In particular a paper was presented to the Equity TV Working Party, which has been expanded upon in consultation with the lead Equity Organisers in the FTVR Department and Matt Payton, Research and Parliamentary Officer in January 2005.

Clearly there are no straightforward solutions to the complex problems that are presented and none have been offered, either in this document or the discussions that have taken place. However there have been some significant concepts and ideas to emerge from the process so far, and these initial recommendations are listed in this document.

#### **BACKGROUND**

- **History**

Equity's Television agreements have more than stood the test of time. Over the years they have been adapted and amended to meet whatever needs have arisen. This policy has been extremely successful and has meant that Equity have some of the best Television agreements in the world and are second to none on the question of secondary use fees. However, in recent years it has become more and more apparent that this process of amendment has developed into being less about taking the agreements forward and more about placing an ever increasing number of sticking plasters over one problem after another.

The latest, and most obvious, of these was the temporary agreement reached dealing with "Showcase Premieres" and first use on BBC's secondary channels. We ended up with an agreement that whilst providing extra money for our members had absolutely no logic to the formula, which multiplied a number of different percentages against a fictitious sales price. It is clear that significant changes need to be made, which not only meet our members' needs, but are also understandable, logical and adaptable. They need also to hold our members in good stead for many years to come, in the way in which our current agreements have.

- **Equity Policy**

Equity policy has been established over many years, but of current policies there are two that stand out. The first, established a number of years ago is that Equity should aim to have **one** TV agreement covering BBC, ITV and Independent Producers. The second and most recent comes from ARC Motion 5 carried from 2004. This motion states:

*This ARC urges the Equity Council ensure that the TV Working Party:*

- 1 insists that the BBC takes full responsibility when commissioning independent production companies for ensuring that all artists are contracted under the terms and conditions of the Equity/PACT Television Production Agreement;*
- 2 Aim to protect the present structure of repeat fees paid by television companies;*
- 3 Present an alternative pay structure, comparable to our present system, to replace terrestrial television repeats when analogue is switched off;*
- 4 Bring a full report to Council on the above points.*

- **Market Developments**

In assessing the problems that are faced by Equity and the current arrangements that are in place it is essential to understand the fundamental change that is taking place in British broadcasting. Recent figures have confirmed what is happening.

- 56% of UK households now have digital TV, with most growth coming from the expansion of Freeview.
- 28% of *viewing* is now through digital TV channels.
- The total subscriber base of Sky (the largest provider of digital television) now stands at 7.6m.
- In 2004 income from subscription TV was higher than advertising revenue for the first time.

These developments illustrate the huge expansion of multi-channel television, which is being driven partly by the Government's proposal to switch-off the analogue television signal and move to digital transmissions. This process is likely to start in some regions as soon as 2008 and could even be completed by 2012.

This hugely significant change has also informed Ofcom's recently published review of public service television broadcasting, as well as the BBC's internal review and Charter Renewal process.

- **Industrial Developments**

It must be noted that there have already been significant changes in the television industry, which have implications for the production of programmes and are also likely to affect the way in which performers are rewarded. Including:

- The new terms of trade for independent production.
- BBC's proposed 15% cut in programme budgets.
- BBC opening up a further 25% of in-house production for tender "Window of Creative Competition" (WOCC).

These changes will inevitably lead to increasing pressure on the current payment structures and agreements covering performers. This will mean an even tougher negotiating environment, as the financial constraints start to bite and key independents exercise greater influence over the future sale of work.

## **INITIAL RECOMMENDATIONS**

These developments are only the start of a period of unprecedented change in the broadcasting industry. In recognition of this change and the stark backdrop to the next round of negotiations, Equity staff have developed a number of initial policy recommendations, which are provided below.

- 1. Current agreements will no longer function.**
- 2. A breakdown into groups of channels should be explored.**
- 3. Employers are likely to want maximum flexibility.**
- 4. Fee Structure.**

These recommendations and observations will require further discussion with the TV Working Group and the Equity Council. However they provide an initial indication of the content of initial discussions.

They are expanded upon in the section below.

### **1. CURRENT AGREEMENTS WILL NO LONGER FUNCTION**

The current payment structures for members working in television were created in an environment where there were only a small number of terrestrial channels. When the analogue signal is switched off, these payment systems will not be fit for purpose, as the current distinction between channels is set to disappear.

At switchover there will no longer be any practical difference between current terrestrial channels (e.g. BBC1, ITV1) and a significant number of secondary channels (e.g. BBC3, ITV2) in respect of access. They will become indistinguishable in the way they are received, as they will all be free-to-air digital channels. As a result the distinctions and definitions that exist in current agreements will become meaningless. This will result in agreements that will simply no longer function.

Some will ask, why can't we simply enforce the existing terrestrial arrangements on the new free-to-air digital channels? The truth is that these rates are not affordable across all of these channels. We can already see the difficulties that exist for Channel 4 and the problems that Five face, when trying to either create new material or repeat old. In the main they cannot afford to do so. In looking

at what Five, for example, can afford we have the examples of *Ruth Rendell* and *Mind To Kill* which were brought for a fraction of what was owed to our members in the form of a residual. The secondary channels that will become free-to-air are currently operating on a royalty basis for their repeat programming, (enhanced for premieres in the interim agreement) which, for primetime drama range from £6000 - £12000 per hour. The cost of a residual is at least 10 times that.

Therefore it is clear that the Broadcasters will not be in a position to pay full terrestrial fees. However we clearly cannot accept an extension of the current arrangements and need to greatly improve them. At the same time, the Broadcasters will be arguing for a reduction in the level of the current terrestrial fees and as revenues fall, which they are most likely to do, as more stations become available.

It is worth noting that the TV Companies are already having some success in making the argument about the impact on revenues. Their market share is already falling against non-terrestrial TV and Ofcom has accepted that this is likely to accelerate with analogue switch off leading to a reduction in commercial TV revenue of £300m to £400m for the existing terrestrial channels (primarily through lost advertising revenue).

Having said all of that, we equally recognise that any new agreement must seek to retain the best principles of the old. Equally, we believe that a payment system based solely on royalties would be unacceptable and deliver little in the way of tangible benefits to our members. Royalties have worked well in providing new revenue streams from secondary markets and should continue to do so. They should not, however, be introduced into whatever become the UK's primary channels, where any ongoing fee structure must be based on some kind of residual.

## **2. A BREAKDOWN INTO GROUPS OF CHANNELS SHOULD BE EXPLORED**

The fact that a royalty and/ or residual system is not sustainable in a digital world means that Equity is bound to examine other options. Here are a number of possibilities that have already been aired:

**Example 1** - One alternative approach is the possibility of building upon the concept of different channels having a different status and standing, with a sort of "sliding scale" of residual type payments. In some ways this would reflect the payment arrangements used in classifying channels in the United States as major networks, minor networks, major pay channel and basic cable channels. For the UK market this categorisation could go one step further and consider an even more specific category of niche channel.

The relative value of each category of channel could then be reflected in any number of ways. For example, it could be possible to start with separate categories, but adopt a *range of residual payments*. The precise payment for the programme could depend on a range of factors, including audience share, the audience reach of the particular programme and/ or transmission and the

time of transmission. This would be flexible enough to allow payments for these channels to overlap and/or be moved into higher or lower levels depending on this range of factors.

**Example 2** - Alternatively, it may be possible to develop a *points system* whereby the original programme fee would “buy” a number of points that could be used depending on the broadcasts that were made. For example, it may be that the original fee allowed for 12 points.

These points could then be allocated to one broadcast on a major network (12 points), two broadcasts on a minor network (6 points each), four on a major pay channel (3 points each), six on a basic channel (2 points each) and twelve on a niche channel (1 point each) – or any variation thereof. Any additional showing would then require the relative proportion of the original fee to be paid for the number of points required (e.g.  $6/12 = 50\%$  for a further showing on a minor network).

	EXAMPLE 1	EXAMPLE 2
LEVEL	RESIDUAL SCALE	ONE BROADCAST
Major networks	90%	12 points
	80%	
	70%	
	60%	
	50%	
Minor networks	70%	6 points
	60%	
	50%	
	40%	
	30%	
Major pay	40%	3 points
	30%	
	20%	
	10%	
Basic	15%	2 points
	10%	
	5%	
Niche	10%	1 point
	5%	

For any breakdown into category of channel to function, the criteria for that breakdown would need to be clear, transparent and objective.

While we would all have an instinctive feeling about the possible categorisation of channels, this would need to be pinned down very firmly. There are a number of possible criteria, some of which are outlined in the table below, along with arguments for and against.

CRITERIA	FOR	AGAINST
Audience Share	Objective and measurable	Not a measure of performers' work
PSB status	Identifiable by licence	Cost disincentive to hold PSB licence
Free or pay channel	Easily distinguishable	No reflection of channel size, importance or budget
Broadcast content	Identifies niche and special interest channels	Constantly changing

From these options it would currently appear that the most objective measure that could be used to distinguish different channels would be audience share. The discussions between Equity staff have found it difficult to develop an alternative that does not include this as a primary measure to separate the different levels of channel – and subsequent amounts payable to performers as a result of programmes that are broadcast.

**Example 3** - Another alternative would be purchasing programmes in a “Time Window”. This would mean that a broadcaster could buy a period of time in which they could transmit on a number of occasions for the initial fee. The questions here would be how much and for how long. Broadcasters like the BBC would probably favour this type of arrangement as it would allow them to broadcast across their “fleet” of channels over the period and/or “time shift” without additional costs. Many channels now have “time shift” options. This is where a channel will also have a +1 channel attached i.e. UK Gold and UK Gold +1. UK Gold +1 transmits exactly the same programmes as UK Gold only 1 hour later.

This arrangement could be combined with one of the other approaches to provide (for different broadcasters) a different amount of time for different cost. It could also be extended to cover the use of material on different formats now and in the future (e.g. internet broadcasts, 3G or wireless technology).

### **3. EMPLOYERS ARE LIKELY TO WANT MAXIMUM FLEXIBILITY**

The reality of Equity’s position is one that is familiar to many trade unions, in that it is often required to react to a situation and a proposal that is brought forward by management. While this process is designed to attempt to set the agenda in these most important of negotiations Equity must make an assessment of the approach that is likely to come from the major employers.

It is clear from the initial indications that employers will want maximum flexibility to show as much as possible on a fleet of channels, which will all be received on a free-to-air digital signal. The buy-in would be for a higher price than currently, but would enable much greater use in future. In particular, broadcasters will want to ensure maximum number of transmissions across other wholly owned channels – so the BBC would wish to have minimal restrictions on showing a programme across BBC1, 2, 3, 4, CBBC, CBEEBIES, BBCi and the internet. There is also the question of video-on-demand for cable operators of the past weeks programming, (not to be confused with archive VoD). This service is freely available through Sky with its Sky Plus package or through TIVO machines. The ability to purchase multiple uses is sure to be high on the employer's agenda.

#### **4. FEE STRUCTURE**

There is also the related issue of what exactly is bought by the original basic fee – in terms of the performers' time and activities and exactly how should an Artist be engaged. In looking at the possibility of one TV agreement, there are a number of existing options as well as infinite new options. It is possible to have a production agreement which has no uses attached that simply pays for the work carried out. A full uses price list could then be attached which could take into consideration all of the examples outlined previously.

The fear that exists, however, is that the more you allow to be purchased at point at contract, the less a "mid-range" Artist actually receives. Just as it is argued that these Artists simply have the current 35% rest of the world pre-purchase incorporated into their fee, there is a danger that the more that is allowed to be purchased in this way the worse that problem will become.

In addition to "what does the fee buy?" there is also the question "how is it structured?". The three current agreements each have their own structure ranging from the Programme Fee (ITV), Weekly Fee (BBC) to Production Fee paid with attendance day payments and multi episodic. This issue will need to be looked at closely as different arrangements favour different kinds of production. Having said that, the initial view from the officials is that a minimum weekly payment enhanced by the type of work (multi episodic) is preferred.

#### **CONCLUSION**

It is the intention of this document to map out some further detail on ideas and issues that have been subject to preliminary discussion, in order to develop new concepts of payment and stimulate an internal discussion on the policy that Equity wishes to pursue.

However, as stated at the start of this document, there are no straightforward solutions to the challenges that are faced as a result of digital switchover. It may be that the new approaches proposed do not turn out to offer a workable solution. There are readily identifiable problems in placing channels across different categories and possible disputes this could cause. In addition, the different characteristics and performance of channels *within* these categories could also be questioned.

Finally, it should be noted that this document does not address all the other issues that will be on the agenda for the next round of negotiations on these key television agreements. These include the calculation of video/ DVD royalties, or detailed alternative arrangements for direct or on-demand access to archive material through internet or wireless services.

## **NEXT STEPS**

The TV Working Party now need to start putting flesh on the bones of issues raised in this paper and identify other issues it wishes to address as part of the current review. Equity's long held objective of having one TV agreement is attainable, but with that comes many dangers as the employers will be seeking the lowest common denominators while we seek the highest. Some compromise, as always, will need to be found if we are able to move forward in agreement, which is by no means a certainty. There is no doubt, these discussions will be very difficult and it is vital that Equity has its own agenda and is not simply responding to the employers. This document is a useful start in looking at the issues we need to face and the forthcoming negotiations.

The Broadcasters/Producers are also having this same discussion, and in order to jointly look at the questions we all face, it has been suggested that a seminar be organised, independently chaired, where all parties could come together over a two day period and discuss the issues in front of us. It has been suggested that such a seminar should not only include officials and Council members from both sides, but also working members and producers from on-going productions.

The Working Party believes this is a positive suggestion and one that should be agreed to. The Working Party also recommend to Council that this paper should be circulated to the Representatives to the ARC and, following Conference, to all Branches and Committees for their comments.

**APRIL 2005**